

Hello and welcome to another edition of City Journal. I'm Kelly Larson, and I'm the Director for the City of Dubuque's Human Rights Department. With me today is Katrina Wilberding, Director of a new organization in town called Proudly Accessible Dubuque and also is currently a member of the Human Rights Commission. Today, we're going to talk a bit about some reasonable ways to make existing buildings more accessible and usable for people with disabilities. So, Katrina, let's get started.

Katrina: Why would a business want to make changes to make their business more accessible to people with disabilities?

Well, the most obvious reason is to improve their customer base. Businesses are in business to make money, and the more people who can get into their buildings and spend money, the more the business will make. Accessibility improvements benefit not only people who use wheelchairs, but they also benefit the elderly who may or may not have a disability and that's an increasing part of our population; changes can also benefit parents with strollers and those with temporary disabilities, like a broken leg. Second, not only is it worthwhile for the business to "spend money to make money" but it's very likely that the improvements that a business makes will also entitle the business to a tax credit or deduction. Finally, both the federal Americans with Disabilities Act and our local civil rights ordinance require businesses built before the laws went into effect to take "readily achievable" steps to remove barriers to accessibility in their businesses. A failure to do so can subject the business to a complaint or lawsuit.

When is a business required to remove barriers to accessibility?

If a business provides goods and services to the public, then it is required to remove barriers if doing so is "readily achievable". Such a business is called a public accommodation because it serves the public. If your business is not open to the public but is only a place of employment like a warehouse, manufacturing facility or office building, then there is no requirement to remove barriers. Such a facility is called a commercial facility. While the operator of a commercial facility is not required to remove barriers, the business must comply with specific construction standards when it alters, renovates or expands its facility.

What does the term "readily achievable" mean?

"Readily achievable" refers to a structural change to a business that makes it more accessible for a person with a disability and that can be accomplished easily and carried out without much difficulty or expense. Examples might be making sure that a business's parking lot has accessible parking that is striped correctly and has the right signage, or installing lever type hardware instead of doorknobs on entrances, or making sure that an entrance that has a high threshold or one step up is ramped. And some changes don't have to cost anything at all – things like moving products around on shelves so that they are at a level that can be reached by a person using a wheelchair, or providing curbside service from a historic shop that might have several stairs to the entrance.

Suppose I operate a restaurant that opened in 1990. The city required that the restaurant comply with the local accessibility code. Is the restaurant

"grandfathered" and not required to remove barriers as required by the ADA?

No. A restaurant is a public accommodation and a place of public accommodation must remove barriers when it is readily achievable to do so. Although the facility may be "grandfathered" according to the local building code, the ADA does not have a provision to "grandfather" a facility. While a local building authority may not require any modifications to bring a building "up to code" until a renovation or major alteration is done, the ADA requires that a place of public accommodation take affirmative steps to remove barriers that are readily achievable even when no alterations or renovations are planned. Keep in mind that readily achievable only applies to buildings that were built before the ADA became effective in 1992 and that have NOT undergone remodeling since 1992. The term readily achievable does not apply to buildings constructed since 1992 or buildings that have been remodeled since 1992 – for those buildings, the law requires strict compliance with new construction and alteration standards.

Does the owner, have to pay for removing barriers?

Yes, but most of the time removing barriers will be at very little or no cost, particularly after tax incentives are taken into account. In addition, tenants and management companies also have an obligation. Any private entity who owns, leases, leases to, or operates a place of public accommodation shares in the obligation to remove barriers.

If a business does remove barriers, are there any tax benefits to help pay for the cost of compliance?

Yes. There is both a tax credit and a tax deduction available. The tax credit is available for small businesses with less than 30 workers and less than one million in gross receipts. After a \$250 deductible, the business can get a tax credit for fifty percent of the money it spends to remove barriers, up to \$10,250. In addition, the tax deduction can be used for amounts up to \$15,000 a year for expenses associated with removing certain barriers.

Does the ADA permit a business to consider the effect of barrier removal on the operation on the business?

Yes. The ADA permits consideration of factors other than the initial cost of the physical removal of a barrier. For example, suppose a convenience store realizes that it would be inexpensive to remove shelving to improve access, but removal of the shelving would result in significant loss of selling space that would have a significant adverse affect on the business. In such a case, removal of a portion of the shelving would be required only to the extent that it would not cause a significant impact.

If an area of a store is reachable only by a flight of steps, would the store be required to add an elevator?

That would be very unlikely because the readily achievable standard does not require barrier removal that requires burdensome expense.

If a business has a portable ramp that they use for deliveries could they just use

that to provide access?

Yes, but only if the installation of a permanent ramp is not readily achievable. In order to promote safety, a portable ramp should have railings, a firm, stable, nonslip surface and the slope should not exceed one to twelve (one unit of rise for every twelve units horizontal distance). It should also be properly secured and staff should be trained in its safe use.

What about employee areas? Is a business required to remove barriers in areas used only by employees?

No. The "readily achievable" obligation to remove barriers in existing facilities does not extend to areas of a facility that are used exclusively by employees. Of course, it may be necessary to remove barriers in response to a request for "reasonable accommodation" by an employee, but that involves a different part of the law than what we are covering today.

How can a public accommodation decide what needs to be done?

One effective approach is to conduct a "self-evaluation" of the facility to identify existing barriers. While not required by the ADA, a serious effort at self-assessment and consultation can save resources by identifying the most efficient means of providing required access and can diminish the threat of litigation. It serves as evidence of a good faith effort to comply with the barrier removal requirements of the ADA. This process should include consultation with individuals with disabilities or with organizations representing them and procedures for annual reevaluations.

How might I go about such an evaluation here in Dubuque?

Well, as you know Katrina, you have been instrumental in providing an option for businesses right here in town to enable them to do that evaluation. Proudly Accessible Dubuque has a website at www.proudlyaccessibledubuque.com that includes a self-assessment survey tool. A business can take that survey to identify possible readily achievable changes and, once changes are complete, can obtain recognition as a Proudly Accessible Dubuque business. PAD provides information about common accessibility issues in four areas: parking, entrances, getting around inside the building/access to goods and services, and restrooms. The website also contains information about the market share and buying power of people with disabilities, as well as tax benefits, all of which can really make changes cost effective.

If a public accommodation determines that its facilities have barriers that should be removed, but it is not readily achievable to undertake all of the modifications now, what should it do?

The best approach is to develop an implementation plan designed to achieve compliance with the barrier removal requirements as soon as possible. Such a plan, if appropriately designed and executed, could serve as evidence of a good faith effort to comply with the barrier removal requirements. In addition, Proudly Accessible Dubuque will recognize businesses who are implementing a plan for barrier removal with an "in progress" award.

What if a business is not able to remove barriers at this time due to its financial situation? Does that mean it is relieved of current responsibilities?

No. If a business can demonstrate that the removal of barriers is not readily achievable, then the next option is to develop a way to make their goods and services available through alternative methods, if undertaking such methods is readily achievable.

Examples of alternative methods include having clerks retrieve merchandise located on inaccessible shelves or delivering goods or services to the customers at curbside or in their homes. Of course, the obligation to remove barriers when readily achievable is a continuing one. Over time, barrier removal that initially was not readily achievable may later become so because of changed circumstances.

What is the City's role in all of this?

The City supports the efforts of Proudly Accessible Dubuque to raise awareness about accessibility in the community and to encourage businesses to voluntarily comply by removing barriers. In addition, certain city departments may be involved at different times. For example, if your business is considering removing barriers to accessibility, you may need to contact the City of Dubuque Building Services Department at 563-589-4150 for further information and to determine if you need a building permit. The City's building department also is involved in hiring an inspector who will be responsible for working with businesses to identify and remove barriers to accessibility. And the City of Dubuque Human Rights Department enforces local law by responding to complaints made by residents affected by a disability. A resident with a concern about the accessibility of a local business can call us at 563-589-4190 to file a complaint.

Ultimately, the City is hopeful that the efforts of Proudly Accessible Dubuque will result in businesses taking steps to improve access voluntarily, rather than having to be forced to make those changes through an enforcement process. For that reason, we were happy to work with Proudly Accessible Dubuque to develop a video with some of our local leaders describing why accessibility makes good business sense and encouraging reasonable, cost effective solutions for existing buildings. We'll close our show today with that video. Thanks for joining us for this edition of City Journal and enjoy the video.